SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1948

No. 76

76

L. D. HARRIS,

Petitioner,

vs.

STATE OF SOUTH CAROLINA

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF SOUTH CAROLINA

PETITIONER'S BRIEF

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Table of Cases Cited.

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PETITIONER'S BRIEF

The Petitioner has seasonably asserted his right under the Federal Constitution to have his guilt or innocence of a capital crime, of which he was convicted and sentenced to death, determined without reliance solely by The State upon a confession obtained by means proscribed by the due process clause of the Fourteenth Amendment to the Constitution of the United States. It is his contention that upon his trial in the Circuit Court, and by the decision of

the Supreme Court of South Carolina, which is the Court of last resort in that State, that the State used an improperly obtained confession against him which resulted in his conviction, and which constitutes a denial to him of due process of law as guaranteed by the Fourteenth Amendment to the Constitution of the United States of America.

The panorama of events which led to his arrest, detention, confession, trial and conviction may be summarized as follows:

The murder of Mr. and Mrs. Edward L. Bennett naturally aroused great and well justified public indignation. For the arrest and conviction of the unknown perpetrator of this crime, a mass meeting was held, at which contributions of money were made and subscribed as a reward for the apprehension and conviction of the guilty party, in the same Court House where the petitioner was later tried and convicted (P. 38).

Other unsolved crimes of a similar and heinous nature had been committed in the vicinity and coupled with this latest offense, had provoked those charged with the enforcement of the criminal law to the utmost of their abilities to end a crime wave which was sweeping the small community (P. 76).

The Governor's State Constabulary, located at Columbia, South Carolina, designated a special officer in the person of Mr. W. J. Thompson to do nothing else but work with and assist local authorities toward a solution of the crime (P. 44, P. 90).

Thus without any planned scientific investigation, and in the midst of an aroused community, suspects were fastened upon and questioned in an attempt to elicit from them self incriminating admissions (P. 37-P. 112).

Finally, without any justification or probable cause that

the petitioner had committed a murder, but merely upon conjecture, a warrant was issued by the Magistrate at the county seat, charging petitioner with the larceny of a pistol. Almost three months had passed since this terrible crime had been committed, it and the other crimes were still unsolved, and the petitioner was then residing and working at Nashville, Tennessee, in the employ of a Construction Company from whom he had obtained a job at about the same time that the murder was committed. This warrant was mailed to the Law Enforcement Officials at Nashville, Tennessee by Sheriff Fallaw of Aiken County, and by telegram he requested that petitioner be "picked up." In accordance with Sheriff Fallaw's request, petitioner was arrested at Nashville, Tennessee and lodged in jail on Friday, July 12, 1946. Sheriff Fallaw was notified that he had been "arrested" and in company with Mr. W. J. Thompson, the designated State Constable who was doing nothing else but working on the case, he proceeded to Nashville, Tennessee. In the early morning hours of July 14th, at about three o'clock A. M., these two officers went to the Nashville jail and without reading any warrant to him, or informing him as to who they were, they took petitioner from the jail in Nashville, Tennessee and started with him to Aiken, South Carolina. The usual formality involving extradition proceedings was dispensed with, and the record is silent as to the legal proceedings followed in obtaining custody of the petitioner. When the officers arrived at Aiken, South Carolina, they placed him in jail instead of taking the petitioner before the Magistrate who had issued the warrant charging him with the larceny of a pistol. From the time of arrest until he was placed in the dock at the Court House for trial, nearly three months later, he was never officially committed to jail although the Code of Criminal Procedure for the State directed that such should

be done. (S. C. Code 1942, Vol. 1, sect. 907; Footnote #1.) Petitioner was placed in the Aiken County jail on Sunday afternoon, July 14th, 1946, and he was removed from that jail to the State Penitentiary in the early morning hours of Thursday, July 18th, 1946. It was during this period of confinement as related above, that he made the confession, the admission of which at his trial he objected to, and upon which alone he stands convicted and sentenced to death. It was following his confession that he was removed to the penitentiary for fear of violence. An examination of the circumstances surrounding the obtaining of the confession, discloses the following facts: Petitioner was placed in the Aiken County jail on Sunday, July 14th, 1946. In response to a question from Mr. W. J. Thompson, he had previously related the whereabouts of a certain 38 calibre pistol which he had disposed of prior to leaving Aiken County and going to Nashville, Tennessee. The next day, Monday, July 15th, 1946, the officers in consequence of the information given them by petitioner concerning this pistol, located and obtained it where he had informed them it should be. The officers having secured the pistol, petitioner was then subjected to a long "session" of protracted, unremitting questioning, in the nature of an accusation, to the effect that he was the murderer of the Bennetts. On Monday the Sheriff began to question him at length, in the presence of another officer (P. 44). The petitioner denied any knowledge of the crime and was locked in jail. That night the questioning was resumed in the jail in the presence of the Chief of Police, a State Constable and the jailer, and he continued

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FOOTNOTE (1)

1942 South Carolina Code of Criminal Procedure, Volume 1, Section 907:

"Upon view of a felony committed, or upon certain information that a felony has been committed, or upon view of a larceny committed, any person may arrest the felon or thief, and take him before a judge or magistrate, to be dealt with according to law."

to deny any knowledge of the crime (P. 45). This questioning and all subsequent questioning, interrogation and accusation of petitioner was conducted in the jail office, which was eight feet by eleven feet in dimensions, and contained a large roll top desk, a flat desk, and three or four chairs as furniture (P. 100). When petitioner asserted on Monday night that he knew nothing of the crime, the Sheriff departed, leaving him to his remaining inquisitors, who continued to question him about this crime, and to whom he continued to deny his guilt (P. 46).

The following day, Tuesday, July 16th, at one or two o'clock in the afternoon, the Sheriff returned to the jail office and resumed the questioning of petitioner, but he denied any knowledge of the crime. It is not clear just how long the questioning had gone on the night before for the Sheriff was unable to say (P. 46). He was questioned in the presence of numerous officers (P. 105) until about 5:30 in the afternoon and denied guilt. The questioning was resumed that night and lasted until about one o'clock on Wednesday morning and Mr. W. J. Thompson, along with the Chief of the State Constabulary, Mr. Richardson, were among the questioners (P. 106). It was during this long vigil of persistent questioning that petitioner "involved" a man named Wylie Bennett (a negro not related to the deceased persons), and the petitioner was questioned first by one and then another of the officers, but when they all left him on Wednesday morning at one o'clock there was no evidence against petitioner and he had made no self-incriminating statements to the officers (P. 107). All of this questioning was in the nature of an accusation to the effect that he had killed the Bennetts. On Wednesday afternoon, July 18, the Sheriff returned to the jail, and for more than three hours and a half sat in the presence of the defendant while he was being grilled. On this occasion the questioning was being conducted by the Chief of Police of the City

of Aiken and another State Constable who had not been present theretofore (P. 48). These officers were questioning petitioner about the same crime which the Sheriff had accused him of committing and of which he had continued steadfastly to deny his guilt (P. 49).

From Monday afternoon until Wednesday morning the officers through questioning the petitioner had been endeavoring "to find out" what he knew about the crime. They had no independent evidence with which to confront or accuse him. During this inquisition he had been slapped by one of them (P. 87), but he denied and continued to deny his guilt. On the Wednesday afternoon when petitioner was "on the grill" several officers questioned him and the afternoon was hot and he was questioned in relays because it was so warm in the room that it was uncomfortable for his inquisitors to remain in the room for any appreciable length of time (P. 101; P. 111). The officer who had slapped him on Tuesday night became weary with the ordeal and walked out, turning him over to his other inquisitors (P. 110). The community, which was undergoing a crime wave, had had its good name further drenched in blood by an assault and battery with intent to kill a local merchant on the previous Saturday night, was the active scene of other State Constables who had been dispatched to Aiken to attempt to solve more recent crime, but having failed, now turned from trying to solve the most recent crime to also questioning petitioner (P. 100). There was a relentless questioning of him by the officers, the manner and nature of which is best expressed in the statement of the officer who had slapped petitioner on Tuesday night, when he said on cross examination "that while questioning petitioner he did not think he had made a useless trip to Nashville for him" (P. 99). The Sheriff, on late Wednesday afternoon, after the weary departure from the jail of this small army of Cross Examiners and accusers, once more returned

himself to confront and interrogate and accuse the petitioner (P. 49). It was then that the climax of three days and nights of intense effort to wring a confession from petitioner was reached in the final effort of the Sheriff, when by a most subtle intrusion he offered petitioner the fearsome alternative of either making a confession or self incriminating declaration, or else the Sheriff would arrest his mother, when he declared to the petitioner, "It looks like I will have to swear out a warrant for your mother for transporting stolen property." Immediately thereafter, imploring the Sheriff not to get his mother mixed up in it, the defendant made a confession (P. 49). The Sheriff summoned the Chief of the State Constabulary, and also Mr. Thompson who had previously slapped petitioner, and the Chief of Police of the city, reduced his "confession" to writing which he signed, in the presence of his interrogators, accusers and inquisitors (P. 51).

Thus, lacking one day of a week from the date of his mail order arrest, after being questioned on Monday afternoon, Monday night, Tuesday afternoon, Tuesday night until Wednesday morning, Wednesday afternoon, and again Wednesday evening, the petitioner made a confession, which was later introduced against him upon his trial, and without which he could not have been convicted.

Point X

At the trial of the petitioner the testimony showed that an examination of the scene of the crime failed to reveal his fingerprints (P. 75). The dying declaration of the murdered man (P. 3) and also the statement of his 3 year old child, the only living eye witness to the crime was to the effect that the murderer was a large man (P. 35). Petitioner is a small man (P. 54). The record fails to show any testimony or evidence, other than the confession, indicat-

ing petitioner's presence in the vicinity of the crime at any time, and affirmatively shows that although the alleged murder weapon and the bullets taken from the bodies of the murdered people were sent to the F. B. I. laboratory at Washington, D. C., the officer who received the report of such examination had no proof the bullets came out of that gun (P. 79). Based upon the foregoing testimony and lack of testimony the presiding Judge instructed the jury "should that confession under your view of the facts and circumstances surrounding the obtaining of it go out of the case, there is not sufficient testimony with it out to render a verdict of guilty against this defendant" (P. 196). Therefore, the sole issue before the Court is whether the confession was made under such circumstances as to render it inadmissible under the applicable decisions of this Court and the due process clause of the Fourteenth Amendment of the Constitution of the United States.

Argument

In the instant case, when motion was made by petitioner to reject the confession as being involuntary, the trial judge said: "*frankly, I was a little bit worried*" (italics added) "until he (petitioner) testified; but from his own testimony, there is no question in my mind, that at this state, it is my duty to rule on it, and I can't, particularly from his own testimony conclude that the statement or alleged statement and confession made by the defendant was obtained by duress or intimidation" (P. 26). When the trial judge stated "frankly, I was a little bit worried . . .", it will be noted that such worry resulted solely from the testimony given by the State's witnesses on direct and cross examination, and was not removed until petitioner testified. Under the applicable decisions of the United States Supreme Court, governing the admission of confessions, it is sub-

mitted that then and there the trial judge should have ruled the confession inadmissible and should not have waited for petitioner to testify before passing upon the most important phase of the case, namely, the testimony concerning the confession, and upon which, alone, petitioner later stood convicted.

In the instant case the South Carolina Supreme Court held that the confession upon which the conviction stood was not rendered inadmissible by the testimony of Sheriff Fallaw to the effect "that if he did not confess, his mother would be arrested or a warrant would be issued therefor . . . and on further questioning he (petitioner) was asked whether the threat of the arrest of his mother induced the confession and he replied in the negative" (P. 205). It is submitted that the record does not support this conclusion. On direct examination petitioner was asked:

> Question: "Did that have any bearing or influence on you to make that statement?"

The Solicitor interrupted and the question was unanswered.

Petitioner was then asked:

> Question: "Was there any connection with that statement by Sheriff Fallaw about having your mother arrested and your statement to him—your confession?" (P. 25).
>
> Answer: "No, Sir, he could have got her. In other words they came over to Columbia on Saturday and I told them to go get her for she didn't do it." (P. 26).

Apparently, the Court understood the answer to the last quoted question to be in reply to the first quoted question, which was never answered. A reasonable construction to be placed upon the last quoted question, whether or not so intended by counsel, is viz: Would the subject matter of the confession furnish sufficient basis for a warrant against

his mother. The answer given clearly shows that such was petitioner's understanding or construction of the question. To conclude that appellant thereby denied that Sheriff Fallaw's threat to place his mother in jail induced him to make the purported confession, is to place a strained interpretation upon the questions and the answer to the last one. And, any doubt should be resolved by the Court in favor of petitioner. No doubt as to the effect of Sheriff Fallaw's threat should exist in the light of the Sheriff's undisputed testimony as to appellant's response to the threat, viz: "Don't get my mother mixed up in it and I will tell you the truth" (P. 30). The purported confession immediately followed. Certainly, any remaining shred of doubt as to whether or not the threat induced the purported confession, and also whether or not appellant denied such inducement, is removed by his response to cross examination, viz: "Q. The Sheriff kept asking you questions? A. Yes, Sir. Q. And you all sat there and smoked some cigarettes? A. Yes, Sir (P. 184). Q. And he treated you nice? A. Well, he forced a statement out of me I didn't know nothing about. Q. Mr. Baker was sitting by the door? A. No, Sir. He was leaning over where they take the finger prints. Q. Where was Mr. Long? A. He was out there next to the door. Q. And you finally told the Sheriff you wanted to tell it to him by yourself? A. I never told him I wanted to tell I killed them. Q. What did you tell him? A. I told him I done told you all the truth and you all won't believe it and then he talked about swearing out a warrant for my mother. Q. Looked like he would have to swear out a warrant for your mother? A. He never said "looked like"—he said he would. Q. What did you tell him? A. I told him I didn't want to do that for neither one. Q. But like you said yesterday, that never had any effect on you? A. Well, it did. Q. Well, you deny your statement you made yesterday, for you know you told the Court it didn't have any effect on

you? A. I said that at the penitentiary. Q. I am talking about what you said here the other day. A. I ain't said nothing about it here, only thing I told him she was just like me, she didn't know nothing about it." (P. 185).

It is further submitted that even had the petitioner actually denied that his purported confession was brought about by the statement of Sheriff Fallaw, such denial does not render the purported confession admissible. In the case of *Ashcraft* v. *Tennessee*, 322 U. S. 143, 88 L. Ed. 1192, 64 S. Ct. 921, the petitioner therein testified that he had been abused, but such abuse had no effect in forcing an involuntary confession from him, but nevertheless, in view of the methods used to obtain the confession it was held inadmissible and the decision of the State Court sustaining the conviction was reversed. See also *Ward* v. *Texas*, 316 U. S. 547, 86 L. Ed. 1663, 62 S. Ct. 1139.

The Court held that the striking of appellant by Constable Thompson, before and within twenty-four hours of his making the purported confession, viz: "It would be unreasonable to conclude that the incident induced the confession; certainly, it was insufficient to remove the issue of the voluntary nature of the confession from the province of the jury where it ordinarily belongs, *in such cases of conflicting evidence*" (emphasis added) (P. 212). Although there is conflicting testimony as to the exact nature of the blow, there is no dispute as to the bald fact that, in the course of the continuous grilling of appellant, Constable Thompson struck him and thereupon said "You are not telling the truth" (P. 87).

We submit that facts and circumstances of *Lyons* v. *Oklahoma*, 322 U. S. 596, 64 S. Ct. 1208, 88 L. Ed. 1481, relied upon by the S. C. Supreme Court, are so different from the undisputed facts in this case, that the portion of the opinion quoted by that Court, is not applicable and should not control. Further, that the portion of that opinion applicable

here is, viz: "Where conceded facts exist which are irreconciliable with such mental freedom regardless of the contrary conclusions of the triers of fact, whether Judge or Jury, this Court cannot avoid responsibility for such injustice by leaving the burden of adjudication solely in other hands . . ." Of the nine elements upon which the conviction in *Lyons* v. *Oklahoma, supra,* was affirmed, only one, viz: the lapse of time between the striking of the appellant by Constable Thompson and the purported confession, was present in this case: It will also be noted that in the *Lyons* case the accused was removed from the scene of the violence and the presence of the persons who had mistreated him to the penitentiary and into the presence of entirely different people, including the warden, whom he knew. It also appears that after that confession he again confessed to a guard. There was no evidence of mistreatment on either of the last two occasions. In the instant case, petitioner was also removed to the penitentiary but has never admitted guilt of the crime after being removed from the scene of his mistreatment and the presence of those who mistreated him. Also, see *Coker* v. *State (Ga.)*, 33 S. E. 2nd 171.

Assuming that appellant denied that the purported confession was induced by the threat of Sheriff Fallaw to have his mother arrested, which assumption is denied, we submit that the facts of *Ashcraft* v. *Tennessee*, 322 U. S. 143, 88 L. Ed. 1192, 64 S. Ct. 921, do apply to this case, since the confession in that case was held inadmissible, in spite of Ashcraft's denial that the acts of the officers had induced the same. Also, see *Lee* v. *Mississippi*, 92 L. Ed. 315 (decided January 19, 1948).

The South Carolina Supreme Court, in affirming petitioner's conviction, had this to say: "Appellant has invoked the protection of the Fourteenth Amendment of the Federal Constitution and asserts that 'due process' was

denied him by admission in evidence of his oral and written confessions of guilt in view of *his version* (italics added) in testimony of the circumstances of the making of them. He relies upon *Chambers* v. *Florida*, 309 U. S. 227, 84 L. Ed. 716, 60 S. Ct. 472; *Ward* v. *Texas*, 316 U. S. 547, 86 L. Ed. 1663, 62 S. Ct. 1139; *Anderson* v. *United States*, 318 U. S. 350, 87 L. Ed. 829, 63 S. Ct. 599; *McNabb* v. *United States*, 318 U. S. 332, 87 L. Ed. 819, 63 S. Ct. 921; and *Malinsky* v. *New York*, 324 U. S. 401, 89 L. Ed. 1029, 65 S. Ct. 781 (P. 214). See opinion of South Carolina Supreme Court, *supra*. On the contrary, petitioner relied mainly upon the testimony of the officers, who were the State's witnesses, for the exclusion of the confession, and continues to rely upon their testimony as sufficient evidence for the rejection of the confession, in that it contravenes the guaranty of due process of law as contained in the Fourteenth Amendment of the Constitution of the United States under the applicable decisions of this Court.

In South Carolina, there is no presumption in law that a confession is voluntary; the burden rests upon the State to show that it was voluntary. *State* v. *Rogers*, 99 S. C. 504; 83 S. E. 971. In South Carolina, the question as to the admissibility of a confession, is addressed in the first instance to the Presiding Judge, but the Jury are the final judges of the fact. *State* v. *Rogers*, *supra*. In this case the Presiding Judge passed upon the admissibility of the confession, and sent it to the Jury as the final arbiters of the fact, which resulted in petitioner's conviction. But petitioner urges before this Court, that his conviction resulted from a trial so violative of his Constitutional rights, as to be a denial to him of the guarantee set forth in the Fourteenth Amendment to the U. S. Constitution, in that he was denied due process of law. Although he stands convicted upon the verdict of a Jury of South Carolina, based upon a confession, this Court is bound to make an independent examina-

tion of the record to determine the validity of the claim, and just because he has been convicted by a Jury does not foreclose the duty of this Court in making this independent examination. *Ashcraft* v. *Tennessee, supra.* Petitioner asserts here, that he does not stand convicted upon the commission of mere error in the Courts below, but has suffered a wrong so fundamental that it made the whole proceeding a mere pretense of a trial. *Brown* v. *Mississippi,* 297 U. S. 278, 80 L. Ed. 682, 56 S. Ct. 461. Under the Fourteenth Amendment, the State of South Carolina is required to conform to these fundamental standards of procedure in a criminal trial. *Chambers* v. *Florida, supra.* It is not necessary that the methods employed by the State to secure the confession from the petitioner in this case be condoned to uphold the law, for the methods themselves were in violation of law. *Chambers* v. *Florida, supra.* It is most earnestly contended, that due process of law, preserved for all by our Constitution, commands that no such practices as that disclosed by the record in this case, should send petitioner to his death. *Chambers* v. *Florida, supra.*

The State of South Carolina, of course, may establish its policy of Constitutional government, but it is limited by the requirements of due process of law, and it is through the guarantee of due process that the State is prohibited from substituting trial by ordeal. Thus, the action of the State, shall be consistent with the fundamental principles of liberty and justice which lie at the base of all our civil and political institutions. *Brown* v. *Mississippi, supra.* Petitioner asserts that in the case at bar, the trial Court was fully advised by the undisputed evidence of the method employed to obtain the confession. The trial Court knew that there was no other evidence upon which to base conviction. Yet it proceeded to permit conviction and to pronounce its sentence. The proceeding and sentence are void for want of due process, and it was challenged by petitioner,

who seasonably and at every stage of the trial objected to the introduction of the involuntary confession. This challenge was made before the Supreme Court of the state. The federal question was presented, but it is submitted that the Court declined to enforce petitioner's Constitutional right. Thus, having made the challenge, based upon the record, specially set up and claimed, the petitioner now asks that the judgment be reversed. *Brown* v. *Mississippi, supra.*

In the case at bar, the confession was obtained by duress, intimidation, coercion, threats and the offer of hope or benefit of reward, and having secured a confession by this method, the trial of petitioner thereafter based upon the confession, was a mere pretense, for the state authorities have contrived a conviction based upon a confession repugnant to the law and based upon violence. *Brown* v. *Mississippi, supra.*

The Sheriff of Aiken County, the Chief of Police of the City of Aiken, the Chief of the State Constabulary of South Carolina, the special officer designated by the State to work on this case together with other Constables, set themselves up as a quasi-judicial tribunal and tried and convicted petitioner in the Aiken County Jail, and in so doing they rendered his subsequent trial before the trial Court and the jury of his peers, a mere formality. *Ashcraft* v. *Tennessee, supra, Lisenba* v. *California*, 314 U. S. 219, 86 L. Ed. 166, 62 S. Ct. 280. The prolonged and persistent questioning of petitioner assumed the nature of an Inquisition, and the State and Federal Courts, as well as text writers, have come to consistently apply this name to such practices. *Ashcraft* v. *Tennessee, supra.* In this case the prisoner from the time of his arrest, until he "confessed" was never represented by counsel and there was never at any time any neutral or impartial person to determine questions between

the officers and the prisoner and so, there was no limit to the range of pressure that could be placed upon him.

The petitioner, who is a young negro in his twenties, had lived his entire life in neighboring towns of South Carolina. It cannot be doubted but that he had great respect and fear of those who held positions of authority. The record discloses the drag net procedure of his arrest for the theft or supposed theft of a pistol, his transportation in the dead of night from Nashville destined for South Carolina where he was later subjected to new surroundings and new people, all of whom were white men, and all of whom were officers of the law. It is undisputed that he later suffered physical violence. He was never arraigned or formally charged. He was held incommunicado without counsel or relatives or friends. He was questioned at will. He was never advised of his rights. It would be absurd to argue that at any time he was given or afforded the choice, freely, to admit, to deny, or to refuse to answer his questioners. He was subjected to circumstances calculated to break the strongest resistance. Monday afternoon, in possession of a 38 pistol which had formerly been in his possession, the officers confronted petitioner—they say what they said to him, he said in his way what was done and what was said—and naturally there is a conflict. Such disputes are always the inescapable consequence of secret inquisitorial practices. Here we have a brutal crime, other crimes have been committed, no one has been brought to justice, and while the Sheriff and Mr. Thompson are in Nashville to get petitioner, another terrible assault and battery is committed in a storehouse in the City of Aiken, where a merchant is shot down. Other officers are sent for, and with petitioner in jail and no arrests, with secret inquisitorial inner details taking place, quite naturally what is done is weighted against the accused. *Ashcraft* v. *Tennessee*, *supra*. He denied his guilt on Monday afternoon; he was questioned on Monday night, for how

long or by whom, has never been clear. He was questioned on Tuesday afternoon; again on Tuesday night, and in an effort to extricate himself, to placate those who were persistently after him and who refused to take "no" for an answer, he tells them about a negro on the Chain Gang. He gave a damaging statement against another man. This did not satisfy his accuser, who weighed 250 pounds (p. 109) and who slapped him and told him he was not telling the truth. Why did this officer not desist at that time? Why did he pursue him further? The answer may be found in his own answer when he said he did not think he had made a trip to Nashville for nothing. Petitioner was questioned again on Wednesday afternoon. Throughout this ordeal of questioning, petitioner had maintained his innocence. It was not until he was confronted by the Sheriff shortly thereafter, when the indirect threat, the indirect promise, the implied threat and the implied promise, to put his mother in jail was made. The promptings of the human heart broke all that was left in him; he confessed, and upon the trial he tried in his illiterate manner to describe how he confessed to the Sheriff, viz: "A. Well whensoever he repeated the words and had repeated everything on that occasion, now and he would ask them—he called up Mr. Sprawls first and then he named them things again and asked me, wasn't it right and I told him yes, sir. He repeated those words twice." (p. 167).

Can it with propriety be argued that such a confession is voluntary, or that such a statement made under such circumstances, is a confession? Mr. Webster's Dictionary defines the word voluntary as follows: "Unconstrained by interference; unimpelled by another's influence; spontaneous; acting of oneself." Under no stretch of the imagination can it be said that petitioner's statement was a "voluntary" confession. He had been questioned by State, County and Municipal officers who acted in their official capacities—

it was their conduct secretly engaged in which produced this statement. This procedure constituted mental torture worse than any physical beating, for certainly the torture lasted longer. *Coker* v. *State*, 33 S. E. (2nd) 171. The Fourteenth Amendment, adopted after much debate, incorporated into the Supreme law of this land, an operating and restraining hand upon the state, and in view of the historical setting and the wrongs which called it into being, leads few to doubt that it was intended to guarantee procedural safeguards, adequate and appropriate, then and thereafter, to protect at all times, people charged with or suspected of crime by those holding power of authority over them. No man's life or liberty should or may be forfeited as criminal punishment for violation of law until there has been a charge fairly made and fairly tried in a public tribunal free of prejudice, passion, excitement and tyrannical power. Thus must we obey procedural safeguards, if due process is to be allowed. *Chambers* v. *Florida*, *supra*. And it must be remembered that a man's Constitutional rights may suffer as much by subtle intrusion as by direct disregard. *Malinski* v. *New York*, *supra*. It is submitted that to have a man "picked up" in another state, and jailed on the assurance that a warrant will be mailed charging him with a crime; to secure his person from the custody of another sovereignty, transport him 400 miles while handcuffed, throw him into jail, hold him incommunicado during which time he was questioned in relays, coupled with violence upon his person, in the dead of summer in a veritable oven, climaxing this farce and injustice by thereafter referring to this confession as being voluntary when it was obtained following three afternoons and three evenings of questioning, threats of arrest and imprisonment of petitioner's mother, does not conform to procedural standards of due process of law. Especially is this true

where the result of such conduct, places an American citizen in the electric chair.

It is respectfully submitted that the judgment should be reversed.

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